

Appl. No. 10/674,670
Atty. Docket No. CM2701Q
Reply dated October 24, 2007
Reply to Final Action of September 19, 2007
Customer No. 27752

REMARKS

Claim Status

Claims 1-9 and 11 are pending in the present application. No additional claims fee is believed to be due.

Claims 10 and 12-20 have been canceled without prejudice.

Claim 1 has been amended to more clearly define the absorbent article in accordance with the teachings of the specification, for example, at page 9. Claims 2-9 have been amended as to matters of form. In addition, new Claims 21-29 have been added.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Rejection Under 35 USC §102(e) Over Funk et al.

Claims 1-9 and 11 stand rejected under 35 U.S.C. 102(e) as anticipated by Funk et al. (US Patent No. 7,144,957). The Office asserts that Funk teaches an absorbent article comprising a substantially liquid pervious topsheet, a substantially liquid impervious backsheet and an absorbent core between said topsheet and said backsheet, wherein said absorbent article comprises a nonwoven fabric (Col. 16, lines 49-57), wherein said nonwoven fabric: a) comprises a plurality of fibers (Col. 16, line 57); b) inherently has a surface tension of at least 65mN/m when being wetted with saline solution; c) inherently has a liquid strike through time of less than 5 s for a fifth gush of liquid; and d) comprises polymers comprising hydrophilic monomer molecules, a reaction product of a radical polymerization initiator molecules chemically grafted to the surface of at least a part of said plurality of fibers comprised by said nonwoven fabric, and agent molecules, wherein the amount of radical polymerization initiator molecules (0.01-5 wt% based upon weight of monomer) is less than 2 wt% of the monomer molecules and at least three times the amount of the agent molecules (0.05-2.0 wt% based upon weight of monomer). (Col. 12, lines 32-35).

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However, as will be set forth in detail below, it is believed that the absorbent article as defined by claims 1 and 21 are not anticipated by Funk. Accordingly, this rejection is traversed and reconsideration is respectfully requested.

The Funk reference teaches polymer mixtures comprising highly swellable hydrogels. Funk also teaches using said polymer mixtures in an absorbent core positioned between a topsheet and a backsheet. (See col. 16, lines 54-57). Further, Funk teaches polymer mixtures having CRC's above 25. (See col. 27, Tables I and II). Funk also teaches crosslinkers and surface postcrosslinking in order to increase polymerization. Based on these teachings, one skilled in the art would understand that the polymer mixture of Funk is highly swellable (highly water absorbent) but not water-permeable. That is, the highly swellable hydrogel taught by Funk will swell and block the pores of a nonwoven web and result in an absorbent article that is not water-permeable (i.e. high strikethrough time).

In contrast, the absorbent article of claims 1 and 21 is a water-permeable, nonwoven fabric for use as a topsheet (claim 1) or core wrap material (claim 21), as opposed to the core itself. Further, the nonwoven recited in claims 1 and 21 does not contain any hydrogel forming polymers. One skilled in the art would understand that the nonwovens recited in claims 1 and 21 would have a CRC of less than 5, much lower than taught by Funk and supporting Applicant's objective of reducing swelling and promoting low polymerization. In order to achieve this objective, Applicants teach agent molecules which reduce homopolymerization of the monomers (p. 12 of specification) and low monomer add-on levels, e.g. 0.3 wt% to 10 wt% (which would correspond to about 5 g/m² for a typical nonwoven sheet of 20 g/m²). As a result, the polymer chains grafted onto the nonwoven do not undergo the swelling of Funk and the nonwoven will allow large amounts of liquid to quickly pass through (as shown by the low liquid strike through times).

As stressed in MPEP §2131, a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Moreover, "The identical invention must be

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shown in as complete detail as contained in the . . . claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989) (emphasis added). Furthermore, not only must all the individual elements be found in a single document, but also they must be arranged as in the claim under review. *In re Raymond G. Bond*, 910 F.2d 831.

Funk fails to teach or suggest a water-permeable nonwoven for use as a topsheet (claim 1) or core wrap material (claim 21), having a liquid strike through time of less than 5 s for a fifth gush of liquid as required by the present claims. Because Funk fails to teach every element of independent claims 1 or 21, Applicants assert that independent claims 1 and 21 are in condition for allowance. Further, because claims 2-9 and 11 depend directly or indirectly from claim 1, they too are not anticipated by Funk and therefore, are in condition for allowance.

Rejection Under 35 USC §103 Over Funk et al.

Claims 1-9 and 11 have been rejected under 35 U.S.C. 103(a) as being unpatentable over the Funk reference previously discussed.

Under MPEP 2142, the Office bears the burden of factually supporting any *prima facie* conclusion of obviousness. In determining the differences between the cited art and the claims, the question is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. See, *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530 (Fed. Cir. 1983). If the Office does not prove a *prima facie* of unpatentability, then without more, the Applicant is entitled to the grant of the patent. See *in re Oetiker*, 977 F.2d 1443.

To establish a *prima facie* case of obviousness under 35 U.S.C. §103, the Office must meet three basic criteria. First, there must be some suggestion or motivation, either in the reference itself, or in the knowledge generally available to one of ordinary skill in the art, to modify the reference. Second, there must be a reasonable expectation of success. Finally, the cited references must teach or suggest all the claim limitations. See, for example, *In re Vaeck*, 947 F.2d 488 (Fed. Cir. 1991). Applicants respectfully assert that the Office Action fails to meet all of these criteria, and thus fails to make a *prima facie* case of obviousness under 35 U.S.C. §103.

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As discussed above, the Funk reference does not teach or suggest a water-permeable nonwoven for use as a topsheet (claim 1) or core wrap material (claim 21), having a liquid strike through time of less than 5 s for a fifth gush of liquid as required by the present claims. In contrast, Funk teaches the use of a highly swellable polymer mixture containing hydrogel for use in an absorbent core. Accordingly, this element of the Applicant's independent claims 1 and 21 is outside of the scope and content of the cited prior art. Therefore, a nonwoven fabric as recited in part in the Applicant's independent claims 1 and 21, differs from the cited prior art and would not have been obvious to one of ordinary skill in the art, at the time of the Applicant's invention. For this reason, the Applicant respectfully requests reconsideration and withdrawal of this 103(a) rejection for independent claims 1 and 21 and the claims which depend therefrom.

Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejections under 35 U.S.C. §102 and §103. Early and favorable action in the case is respectfully requested.

This response represents an earnest effort to place the application in proper form and to distinguish the invention from the applied references. In view of the foregoing, reconsideration of this application and allowance of Claims 1-9, 11 and 21-29 is respectfully requested.

Respectfully submitted,

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